

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Granted.

1:06 PM, Dec 23, 2022

MAXRELIEF USA, INC.,

PLAINTIFF,

v.

**JOHN O'MALEY D/B/A JOHN
O'MALEY AND ASSOCIATES,**

DEFENDANT.

: Civil Action No. 1:21-cv-00755

**: Judge Matthew W. McFarland
Magistrate Judge Karen L. Litkovitz**

:

**: MOTION TO SEAL EXHIBITS
2 & 3 OF PLAINTIFF'S MOTION TO
EXTEND THE DISCOVERY
DEADLINE [DOC #43]**



Plaintiff MaxRelief USA, Inc. moves this Court to issue an order sealing Exhibits 2 and 3 of Plaintiff's Motion to Extend the Discovery Deadline [Doc #43; Page ID #127-136]. This motion is supported by the following memorandum of law.

Respectfully submitted,

/s/ Jason S. Nardiello

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MEMORANDUM IN SUPPORT

Plaintiff MaxRelief USA, Inc. (“MaxRelief”) moves to seal Exhibits 2 and 3 of its Motion to Extend the Discovery Deadline. [Doc #43; Page ID #127-136]. Exhibits 2 and 3 consist of eight pages of the transcript of the deposition of John O’Maley, which were filed consistent with the Court’s Order that MaxRelief’s Motion to Extend the Discovery Deadline was to include “the deposition testimony identified during the [informal telephone discovery] conference.” [Doc #42]. Mr. O’Maley has designated the entirety of his deposition transcript as “Confidential” under the Stipulated Protective Order entered in this action. [Doc #37].

After MaxRelief filed its Motion to Extend the Discovery Deadline, counsel for Mr. O’Maley demanded that MaxRelief remove Exhibits 2 and 3 from the docket and, instead, provide Exhibits 2 and 3 to the Court for *in camera* review. MaxRelief, however, is unaware of a process for simply “removing” the Exhibits from the docket. Further, MaxRelief understood that its obligation, pursuant to the Court’s Order [[Doc. #42](#)], was to file the deposition testimony upon which its Motion to Extend the Discovery Deadline relied.

In an effort to accommodate Mr. O’Maley’s demand, MaxRelief prepared a proposed joint motion to seal Exhibits 2 and 3, which it presented to Mr. O’Maley’s counsel on December 21. On December 22, 2022, Mr. O’Maley’s counsel declined to join the proposed motion to seal. In response, MaxRelief’s counsel requested that Mr. O’Maley’s counsel reconsider whether Exhibits 2 and 3 were properly deemed “Confidential” and noted the incongruity of Mr. O’Maley’s counsel insisting that Exhibits 2 and 3 were protected from disclosure, while refusing to join MaxRelief’s proposed motion to seal. Mr. O’Maley’s counsel again declined to reconsider its position that Exhibits 2 and 3—and, indeed, the entirety of Mr. O’Maley’s deposition transcript—were “Confidential.” Accordingly, MaxRelief is left in the position of

attempting to comply with paragraph 8 of the Stipulated Protective Order by “seeking the Court’s permission to file the document[] under seal”—but without Mr. O’Maley’s cooperation or support.

Parties wishing to seal documents on the Court’s docket must provide “compelling reasons” justifying the seal and must also demonstrate that the seal is “narrowly tailored to serve that reason.” *The Proctor & Gamble Co. v. Ranir, LLC*, Case No. 1:17-CV-185, [2017 U.S. Dist. LEXIS 131141, 2017 WL 3537197](#) (S.D. Ohio Aug. 17, 2017) *citing* *Shane Grp., Inc. v. Blue Cross Blue Shield*, [825 F.3d 299, 306](#) (6th Cir. 2016). As the Court recognized in *Proctor & Gamble*, protecting confidential information that would otherwise allow competitors an inside look at a company’s business strategies is a compelling reason.

The deposition testimony at issue here concerns (1) the identity of individuals and companies who, according to Mr. O’Maley, voiced complaints about MaxRelief; and (2) the potential implications of such complaints on Mr. O’Maley. Public disclosure of this information could, according to Mr. O’Maley,¹ provide the public and potential competitors insight into his business operations.

Under the Protective Order, any document or information designated as “Confidential” must be material that is protected from disclosure “by statute or common law, including but not limited to, confidential personal information, trade secrets, or other such sensitive commercial information that is not publicly available.” [Doc #37 [PAGEID #68](#)]. The names and identity of sales and contact information of Mr. O’Maley constitutes, according to Mr. O’Maley, such confidential and sensitive commercial information.

¹ It is Mr. O’Maley who has designated the entirety of his deposition transcript “Confidential” and who objects to the public disclosure of Exhibits 2 and 3 to MaxRelief’s Motion to Extend Discovery. MaxRelief does not waive its right under the Protective Order to dispute the “Confidential” designation as to Exhibits 2 and 3 or any other material so designated by Mr. O’Maley.

Accordingly, Plaintiff MaxRelief respectfully moves that the Court order the Clerk of the Court to seal Exhibits 2 and 3 of Plaintiff's Motion to Extend the Discovery Deadline [Doc #43; Page ID #127-136].

Respectfully submitted,

/s/ Jason S. Nardiello

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Attorneys for Plaintiff MaxRelief USA, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically this 22nd day of December, 2022. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Jason S. Nardiello
Jason S. Nardiello (pro hac vice)

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